

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH JEROME WRIGHT,
Plaintiff,
v.
RODRIGUEZ, et al.,
Defendants.

No. 1:23-cv-01586 GSA (PC)

ORDER DIRECTING PLAINTIFF TO SHOW
CAUSE WHY HIS IN FORMA PAUPERIS
STATUS SHOULD NOT BE REVOKED IN
LIGHT OF 28 U.S.C. 1915(g)

(See ECF No. 7)

PLAINTIFF'S SHOWING OF CAUSE DUE
SEPTEMBER 24, 2024

KEITH JEROME WRIGHT,
Plaintiff,
v.
ZALDIVAR-GALVES,
Defendant.

No. 1:24-cv-01029 GSA (PC)

ORDER DIRECTING PLAINTIFF TO SHOW
CAUSE WHY HIS APPLICATION TO
PROCEED IN FORMA PAUPERIS STATUS
SHOULD NOT BE DENIED IN LIGHT OF 28
U.S.C. 1915(g)

(See ECF No. 2)

PLAINTIFF'S SHOWING OF CAUSE DUE
SEPTEMBER 24, 2024

Plaintiff, a state prisoner proceeding pro se, has filed civil rights actions in the above-referenced matters seeking relief under 42 U.S.C. § 1983. The cases were referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, Plaintiff will be ordered to show cause why: (1) his in forma pauperis status in Wright v. Rodriguez, No. 1:23-cv-01586 GSA (“Wright I”) (see Wright I, ECF No. 7) should not be revoked, and (2) his application to proceed in forma pauperis in Wright v. Zaldivar-Galves, No. 1:24-cv-01029 GSA (“Wright II”) (see Wright II, ECF No. 2) should not be denied in light of 28 U.S.C. § 1915(g).

I. RELEVANT FACTS

On November 9, 2023, Plaintiff’s complaint in Wright I and his application to proceed in forma pauperis were docketed. Wright I, ECF Nos. 1, 2. Shortly thereafter, Plaintiff’s application to proceed in forma pauperis was granted. Wright I, ECF No. 7.

On August 29, 2024, Plaintiff’s complaint in Wright II was docketed along with an application to proceed in forma pauperis. Wright II, ECF Nos. 1, 2. Plaintiff’s in forma pauperis application is still pending before this Court.

II. APPLICABLE LAW

28 U.S.C. § 1915(g) states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

III. DISCUSSION

A. Plaintiff Appears to be a Three Strikes Litigant Within the Meaning of Section 1915(g)

The Court takes judicial notice¹ of the following cases of Plaintiff’s that were fully

¹ A court may take judicial notice of its own records. See United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004); see United States v. Author Servs., Inc., 804 F.2d 1520, 1523 (9th Cir. 1986) overruled on other grounds, United States v. Jose, 131 F.3d 1325, 1328-29 (9th Cir. 1997).

adjudicated at the time he filed Wright I and Wright II. These matters appear to constitute strikes within the meaning of Section 1915(g):

- Wright v. Sacramento Police Department, No. 2:13-cv-02125 EFB (E.D. Cal. Aug 8, 2014) (dismissed for failure to amend after determination that matter failed to state a claim);²
- Wright v. Bank of America, 2:16-cv-01858 MCE CKD (E.D. Cal. Jan 31, 2017) (dismissal for failure to amend after determination that matter failed to state a claim), and
- Wright v. Sherman, No. 1:21-cv-01111 DAD SAB (E.D. Cal. Feb. 22, 2022) (voluntary dismissal after determination that complaint failed to state a claim);³

B. Plaintiff Was Not in Imminent Danger When He Filed Wright I and Wright II

In addition, a review of Wright I and Wright II indicates that Plaintiff did not make plausible claims in those complaints that he was in imminent danger of serious physical harm at the time he filed each of these matters. See Wright I, ECF No. 1 (complaint); Wright II, ECF No. 1 (complaint). For these reasons, Plaintiff is precluded from proceeding in forma pauperis in either action and must pay the filing fees for these cases in full before he may proceed any further in them. However, prior to being ordered to do so, he will be allowed to show cause: (1) why his in forma pauperis status in Wright I should not be revoked, and (2) why his application to proceed in forma pauperis in Wright II should not be denied. He will be given twenty-one days to file the

² The dismissal of a complaint after (1) a court has determined that it fails to state a claim, and (2) a plaintiff is granted leave to amend, yet he fails to do so, constitutes a strike under Section 1915(g). See Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir. 2017).

³ A voluntary dismissal after it has been determined that a complaint fails to state a claim still constitutes a strike within the meaning of 28 U.S.C. § 1915(g). See Harris v. Mangum, 863 F.3d 1133 (9th Cir. 2017) (style of dismissal immaterial when determining if dismissal counts as strike; question is whether dismissal “rang the [Prison Litigation Reform Act] bells of frivolous, malicious, or failure to state a claim”); Sumner v. Tucker, 9 F. Supp. 2d 641, 643-44 (E.D. Va. 1998) (voluntary dismissal does not relieve plaintiff of consequences of filing frivolous action under Section 1915(g)); Heilman v. Deillen, No. 14-cv-6298 JVS FFM, 2017 WL 10591881, at *4-5 (C.D. Cal. Sept. 18, 2017) (“[I]t would frustrate the purposes of § 1915(g) if plaintiff avoided a strike merely because he, rather than the court, instigated the dismissal of an action that he acknowledged was non-viable.”).

showings of cause.

Accordingly, consistent with 28 U.S.C. § 1915(g), IT IS HEREBY ORDERED that:

1. Plaintiff is ordered to SHOW CAUSE in Wright v. Rodriguez, No. 1:23-cv-01586 GSA why his in forma pauperis status should not be REVOKED. See Wright I, ECF No. 7.

2. Plaintiff is ordered to SHOW CAUSE in Wright v. Zaldivar-Galvez, No. 1:24-cv-01029 GSA why his application to proceed in forma pauperis should not be DENIED. See Wright II, ECF No. 2, and

3. Plaintiff's showings of cause in *both* cases shall be filed *simultaneously*, and they may be identical in content, and

4. Both showings of cause shall be filed within twenty-one days from the date of this order – **i.e., by September 24, 2024.**

Plaintiff is cautioned that failure to comply with this order within the time allotted may result in a recommendation that this matter be dismissed.

IT IS SO ORDERED.

Dated: September 2, 2024

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE